RSC Republican Study Committee
REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
rsc.price.house.gov
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……December 8, 2010

Contents:

H.R. 5987 - Seniors Protection Act of 2010 *(Pomeroy, D-ND)*

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5987 would give recipients of social security, railroad retirement benefits, or veterans' disability compensation or pension benefits, a $250 check from the Department of the Treasury. Recipients would have to have been receiving benefits from one of the three respective programs for at least 3 months prior to enactment of this legislation, in order to receive this $250 check.

Individuals receiving payment are only entitled to one payment and must reside in the 50 states, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands, or who are utilizing a foreign or domestic Army Post Office, Fleet Post Office, or Diplomatic Post Office address.

This legislation requires the Treasury to begin disbursing payments as soon as practicable in 2011, and before April 1, 2011. No payments shall be made after December 31, 2011, regardless of any determinations of entitlement to, or eligibility for such payments.

These payments shall not be considered as income for purposes of taxation under the Internal Revenue Code.

Conservative Concern: Some conservatives may be concerned that the legislation will add $14 billion to the deficit. Some conservatives may also be concerned that the payments would go to all beneficiaries regardless of need.

Committee Action: H.R. 5987 was introduced on July 30, 2010, and referred to the House Ways and Means, Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials, and Veterans' Affairs Committees, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time. However the bill will apparently increase mandatory spending by $14 billion.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. It increases mandatory spending by $14 billion.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO report listing any potential mandates is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

S. 3789 - Social Security Number Protection Act of 2010
(Sen. Feinstein, D-CA)

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: S. 3789 requires that no federal, state, or local agency display the Social Security account number of any individual, or any derivative of such number, on any check issued for any payment by the federal, state, or local agency. This legislation shall apply to checks that are written 3 years after enactment.

This legislation also requires that no federal, state, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the Social Security account numbers of other individuals. For purposes of this clause, the term `prisoner' means an individual confined in a jail, prison,

or other penal institution or correctional facility pursuant to such individual's conviction of a criminal offense.

Committee Action: S. 3789 was introduced on September 15, 2010, and was discharged by the Senate Committee on Finance on September 28, 2010. It then passed the Senate on September 28, 2010 by unanimous consent and was held at the desk.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

H.Res. 1746 - Recognizing and supporting the efforts of Welcome Back Veterans to augment the services provided by the Departments of Defense and Veterans' Affairs in providing timely and world-class care for veterans and members of the Armed Forces suffering from PTSD and related psychiatric disorders *(Israel, D-NY)*

Order of Business: The resolution is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the resolution.

Summary: H.Res. 1746 resolves that the House of Representatives:

- "Recognizes and supports the efforts of Welcome Back Veterans to augment the services provided by the Departments of Defense and Veterans Affairs in providing timely and world-class care for veterans and members of the Armed Forces suffering from post-traumatic stress disorder and related psychiatric disorders; and

- "Encourages the Secretary of Veterans Affairs to establish innovative public-private partnerships for the treatment and research of post-traumatic stress disorder in teaching hospitals across the country."

This resolution contains a number of findings, including:

- "The Boston Red Sox Foundation has been augmenting the Departments of Defense and Veterans' Affairs in providing care for veterans and members of the Armed Forces suffering from post-traumatic stress disorder (PTSD) and related psychiatric disorders;
- "Major League Baseball, in partnership with the McCormick Foundation, the Entertainment Industry Foundation, and University Hospitals at Weill Cornell, the University of Michigan and Stanford University have founded Welcome Back Veterans, a not-for-profit organization committed to creating a national network of centers to provide the best care to veterans, and funding groundbreaking research to limit the scope of PTSD;
- "Has Major League Baseball and the Boston Red Sox Foundation have already raised $15 million in private funding to support treatment, research, and innovation in PTSD care through grants to other service organizations;
- "The Department of Veterans Affairs is currently not providing treatment services for family members of those suffering from PTSD; and
- "5,000 veterans and members of the Armed Forces are already receiving help through the Welcome Back Veterans program."

Committee Action: H.Res. 1746 was introduced on December 1, 2010, and was referred to the House Veterans' Affairs and House Armed Services Committees, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time. This legislation encourages the Secretary of Veterans Affairs to establish innovative public-private partnerships for the treatment and research of post-traumatic stress disorder in teaching hospitals across the country.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

H.R. 5470 - To exclude an external power supply for certain security or life safety alarms and surveillance system components from the application of certain energy efficiency standards under the Energy Policy and Conservation Act *(Pallone, D-NJ)*

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5470 amends the Energy Policy and Conservation Act to exclude the power supply of certain security or life safety alarms, or surveillance systems, from the applicability of No-Load Mode energy efficiency standards.

This legislation defines security or life safety alarm or surveillance systems as equipment designed and marketed to perform any of the following functions (on a continuous basis):

- "Monitor, detect, record, or provide notification of intrusion or access to real property or physical assets or notification of threats to life safety;
- "Deter or control access to real property or physical assets, or prevent the unauthorized removal of physical assets;
- "Monitor, detect, record, or provide notification of fire, gas, smoke, flooding, or other physical threats to real property, physical assets, or life safety;
- "Is designed and marketed with a built-in alarm or theft-deterrent feature; or
- "Does not operate necessarily and continuously in active mode."

The No-Load Mode energy standards that were established by the Energy Policy and Conservation Act shall not apply to external power supplies built before July 1, 2017 that:

- "Is an AC-to-AC external power supply;
- "Has a nameplate output of 20 watts or more;
- "Is certified to the Secretary as being designed to be connected to a security or life safety alarm or surveillance system component; and
- "On establishment within the External Power Supply International Efficiency Marking Protocol, as referenced in the `Energy Star Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies', published by the Environmental Protection Agency, of a distinguishing mark for products described in this clause, is permanently marked with the distinguishing mark."

The Secretary shall establish safeguards for the protection of confidential business information, and shall restrict the eligibility of external power supplies for the exemption provided on a finding that a substantial number of the external power supplies are being marketed to or installed in applications other than security or life safety alarm or surveillance systems.

Committee Action: H.R. 5470 was introduced on May 28, 2010, and referred to the House Energy and Commerce Committee, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

H.R. 4501 - Guarantee of a Legitimate Deal Act *(Weiner, D-NY)*

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4501 would make it a federal crime for online purchasers of precious metals to destroy or melt the consumer's jewelry before receiving an acceptance from the consumer of the purchaser's offer. This legislation would also make it a crime to fail to promptly return jewelry to the consumer if the consumer declines the offer to purchase made by the online purchaser.

This legislation would also require the online purchaser to insure any shipment of jewelry in an amount equal to 60% of the melt-value, or the full amount by which the consumer had insured the jewelry (if the consumer provides proof of such insurance).

Violations of this legislation will be treated as unfair and deceptive acts or practices per Federal Trade Commission Act.

Additional Information: The below information has been provided by the Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection"

> "Internet based gold purchasers, particularly Cash4Gold, have come under significant scrutiny for undervaluing jewelry and losing consumer goods."
>
> Since October 20081, consumer advocacy blog, 'the Consumerist' has been following allegations of fraud by Cash4Gold. In February 2009, former Cash4Gold employee Michele Liberis2 posted on ComplaintsBoard.com a description of unsavory practices3 at the Cash4Gold. Cash4Gold responded with a defamation lawsuit against Ms. Liberis, another former employee, and 'the Consumerist' but subsequently dropped the lawsuit.
>
> In October 09, Cash4Gold was charged with a class action lawsuit for racketeering and fraud in California4. In February 2010, Florida's AG launched an investigation into the company after receiving at least 72 complaints5 from its customers.
>
> Additionally, a March 2009 study by Good Morning America6 and a November 2009 study by Consumer Reports7 also found that mail-in gold companies consistently undervalue items. On May 10th, 2010 the AARP8 released a bulletin warning its members against mail-in jewelry scams. CBS, Parade, the LA Times, the NY Times, and the NY Post have also run stories on fraud or undervaluing by mail-in gold purchasers."

This legislation only applies to "online purchasers of precious metals." This is defined as those who operate with a website by which they solicit transactions. Some analysts argue that these provisions should be expanded to apply to all mail-in purchasers who operate in interstate commerce, regardless of how they solicit their business.

Furthermore, this bill sets no definition for precious metals, and it sets no time limit for how long purchasers would be required to wait for consumers to accept or reject the purchaser's offer.

Committee Action: H.R. 4501 was introduced on January 21, 2010, and referred to the House Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection. A subcommittee hearing was held on May 13, 2010, and the legislation was approved by voice vote.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO estimates that implementing H.R. 4501 would not significantly increase spending subject to appropriation.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's

no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

H.R. 5012 - Weekends Without Hunger Act
(Titus, D-NV)

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5012 creates a Weekends and Holidays Without Hunger pilot program under the Secretary of Agriculture, to provide food to at-risk school children on the weekends and during extended school holidays during the school year. This program will run until September 30, 2015.

The Secretary is allowed to set requirements and guidelines for institutions that wish to participate in the program, and it allows the Secretary to give priority to certain eligible institutions.

H.R. 5012 mandates that a program evaluation be conducted by November 30, 2013, and that a final report be delivered to Congress by December 31, 2015. The report will evaluate the program and will include any recommendations of the Secretary for legislative action.

For each of fiscal years 2011 through 2015, the Secretary shall use "such sums as are necessary," but not less than $10,000,000, to purchase commodities to carry out this legislation. This funding would be subject to appropriation.

Conservative Concerns:
New Programs & New Spending. The bill creates another new program without eliminating any existing programs. The bill would lead to $350 million of new spending subject to appropriation.

Programs are Constitutionally Questionable. Many conservatives might believe that the federal government should extricate itself from providing meals all together because it is the duty of individual states, which know the need better than the federal government. These activities may be more appropriately conducted at the state level.

Broken Records & Duplicative Programs. Just last week the House passed the Healthy, Hunger-Free Kids Act of 2010, S. 3307 (by a roll call vote of 264-157), which spent $4.5

billion over 10 years on programs aimed at addressing the same issue. This legislation creates another layer of prescriptive and duplicative child nutrition programs.

Committee Action: H.R. 5012 was introduced on April 13, 2010, and referred to the House Education and Labor Subcommittee on Healthy Families and Communities, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time. However, it is RSC Staff understanding that the bill would authorize $350 million of new spending subject to appropriation.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. This legislation creates a new program under the Department of Agriculture.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available containing this information.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

S. 3817 – CAPTA Reauthorization Act of 2010
(Dodd, D-CT)

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: S. 3817 reauthorizes, through 2015, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, the Abandoned Infants Assistance Act of 1988, and the Family Violence Prevention and Services Act. This legislation provides for several minor technical changes in these laws, but contains no new spending and creates no new programs.

Child Abuse Prevention and Treatment and Adoption Reform Act of 1978: This legislation has been reauthorized in 1984, 1988, 1992, 1996, and most recently on July 25, 2003 with the Keeping Children and Families Safe Act. It promotes states to pass comprehensive adoption assistance laws. It also provides grants to encourage adoption of

special needs children. This legislation originally broadened the definition of abuse, adding a specific reference to sexual abuse.

Abandoned Infants Assistance Act of 1988: This legislation provides a grant program, under the Department of Health and Human Services, to public and nonprofit entities to prevent the abandonment of infants and young children (particularly those exposed to HIV/AIDS), identify the needs of abandoned infants and young children, assist them with residing with foster families or the natural families, recruit and retain foster families, and recruit and train health and social services personnel to work with such families.

Family Violence Prevention and Services Act: This legislation is was originally enacted in the Child Abuse Amendments of 1984, and was reauthorized by the Keeping Children and Families Safe Act of 2003. This legislation provides federal funding directly to domestic violence shelters and programs. It administers formula grants to states, territories and tribes, and state domestic violence coalitions, and national and special-issue resource centers. Although no CBO score exists, the Department of Health and Human Services states that this legislation is authorized at $175 million annually. S. 3817 also requires the Secretary to award formula grants to states and Indian tribes to assist with supporting programs and projects.

Committee Action: S. 3817 was introduced on September 22, 2010, and referred to the Senate Health, Education, Labor, and Pensions Committee, which held a markup on December 2, 2010, and passed the bill with amendments, and without a committee report. S. 3817 then passed the Senate on December 3, 2010 by unanimous consent and was referred to the House Committee on Education and Labor, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A report from CBO was unavailable at press time. However, it is RSC staff understanding that this legislation only reauthorizes current programs and current authorization levels.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available containing this information.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

H.R. 6495 - Robert C. Byrd Mine Safety Protection Act of 2010
(George Miller, D-CA)

***Please note the conservative concerns below.**

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 6495 would require operators of underground coal mines and other underground mines to improve employee safety measures and comply with new employee rights standards. It would create more whistleblower protections and increase penalties for violations of safety and health mandates.

Highlights of the legislation are as follows:

Additional Inspection and Investigation Authority.

- *Accident Investigation Requirements*. Requires the Secretary to determine why an accident occurred and whether there were violations of law or mandatory health/safety standards. If there is evidence that federal criminal law was violated, the Secretary may refer the evidence to the Attorney General.

- *Independent Investigations.* Requires an independent investigation for an accident involving 3 or more deaths, or an accident that is "of such severity or scale for potential or actual harm" that the accident merits an independent investigation according to the Secretary of Health and Human Services.

- *Panel on Accidents*. Requires the HHS Secretary to appoint a 5 member panel of experts in mine safety, engineering, etc. The panel will be chaired by a representative from the Office of Mine Safety and Health Research of the National Institute for Occupational Safety and Health (NIOSH). NIOSH staff will help work on the panel. The panel shall have the following duties:

    - Assess and identify any factors that caused the accident;
    - Identify and evaluate any contributing actions or inactions of the operator, contractors, state agencies with oversight responsibilities, any agency or office at the Department of Labor, **or any other person or entity**.

    The panel shall prepare a report that:

    - Includes findings regarding the causal factors;
    - Identifies any strengths and weaknesses in the Secretary's investigation; and includes recommendations to industry, labor organizations, state and federal agencies, or Congress regarding regulatory, enforcement,

administrative, or other changes that would prevent a recurrence of the accident.

- *MOU on administrative arrangements*. Requires the Secretary of Labor and the Secretary of HHS to issue a memorandum of understanding that outlines administrative arrangements to ensure the investigation is not delayed by activities of the panel and establishes a process to resolve conflicts between such investigations. Ensures panel members or staff will be able to participate in investigation activities.

- *Subpoenas*. Allows the Secretary to sign or issue subpoenas for witnesses and the production of information.

- Provides that if an accident occurs and a miner is entrapped, the miner's closest relative may act on behalf of the miner.

Enhanced Enforcement Authority.

- *Pattern Status.* Requires a coal or other mine to be placed in "pattern status" if the mine has a pattern of citations for things such as significant or substantial violations, failure to comply with mandatory health and safety standards, or accidents and injuries.

- *New Inspection Requirements*. Requires the Secretary to notify the mine operator that a mine has been put on pattern status, issue an order to get all people out of the mine, issue a remediation order within 3 days, and **increase the number of inspections to 8 per year (doubled from current law).** The remediation order may require an operator to carry out one or more of the following requirements:

    - Provide specified training;
    - Institute and implement an effective health and safety management program; and
    - Facilitate any effort to communicate directly with miners employed at the mine outside the presence of mine operators or its agents in order to obtain information about mine conditions, health and safety practices, or advising them of their rights.

  If the mine operator fails to fully comply with the remediation order, the Secretary shall reinstate the "withdrawal order."

- Provides that a withdrawal order shall not be lifted until the Secretary verifies that all violations identified in the remediation order have been or are being fully abated or corrected.

- *Performance Evaluation*. Requires the Secretary to evaluate the performance of each mine in pattern status **every 90 days**. The Secretary must determine that, for each 90-day period:

- The rate of citations at such mine is in the top performing 35th percentile of such rates for mines of similar size and type, or has been reduced by 70 percent from when it was put in pattern status;
- The accident and injury rates are in the top 35th percentile for mines of similar size and type; and
- No citations or withdrawal orders were issued.

- *Removal from Pattern Status.* Requires the Secretary to remove a coal or other mine from pattern status if, for one year, the mine has met certain criteria outlined in the bill relating to a reduction in accident and injury rates and violations.

- *Regulations*. Requires the Secretary to issue interim final regulations defining the threshold benchmarks to trigger pattern status, and the performance benchmarks to get off of pattern status. No later than two years after the date of enactment, the Secretary shall promulgate a final regulation. The Secretary shall also establish and maintain a publically available electronic database used to determine pattern status for all mines.

- *Fees.* Requires the Secretary to *collect fees from mines in pattern status* beginning 120 days after enactment. The fees are for the costs of additional inspections.

<u>Penalties.</u>

- *Increased Civil Penalties During Pattern Status.* Provides that an operator of a coal or other mine in pattern status that fails to meet performance benchmarks shall be assessed an increased civil penalty for violations of the act. The civil penalties are not less than $10,000 or more than $100,000 for the first occurrence, and not less than $20,000 or more than $200,000 for any subsequent violation during a 3 year period.

- *Criminal Penalties*. Among other criminal penalties for certain violations, the bill provides that operators that *knowingly* violate a mandatory health or safety standard shall be fine not more than $250,000 or imprisoned for not more than one year or both. If it is not the first violation, he/she will be fined not more than $1 million or imprisoned for not more than 5 years or both (6 months under current law). *This criminalizes a person's "knowing" conduct rather than "willful" actions.*

- *Interest.* Creates a new requirement for pre-final order interest and levies post-order interest at a rate of 8 percent, starting from the date a citation is contested.

- *Advance Notice Penalty.* Provides that anyone who gives advance notice of an inspection shall be fined or imprisoned for not more than 5 years or both.

Worker Rights and Protections.

- *Whistleblower Protections.* Provides that no miner or employee shall be discriminated against if he or she has been involved in filing a complaint, been involved in a proceeding, testified, or refused to violate any provision of this act.

- *Refusal to Perform Duties*. No miner or employee shall be discriminated against if he/she has a "good-faith and reasonable belief that performing such duties would pose a safety or health hazard…". The standard for whether or not the person should be performing the duties is whether a "reasonable person" would conclude that there is a hazard.

- *Complaints.* Individuals who believe that they were discriminated against unjustly may file a complaint with the Secretary no later than 180 days after the later of: the last date on which the violation occurred, or the date on which the miner knows or should reasonably have known that such alleged violation occurred. An investigation should start within 15 days of receiving the complaint. The miner will be reinstated until a final order if the complaint is not fraudulent.

- *Investigation.* Provides that after a legitimate complaint has been filed, an investigation shall include interviewing the complainant and allowing the respondent to submit a written response to the complaint; and providing the complainant an opportunity to rebut any statements or evidence.

- *Loss of Pay for Miners*. Provides that if a mine is closed due to this bill, the workers who are idled are entitled to full compensation by the operator at their regular rates of pay for the time the mine is closed. The bill includes enforcement provisions to require compensation pay.

Modernizing Health and Safety Standards.

- *New Reporting Program.* Requires each operator of an underground coal mine to implement a program at the mine to brief miners on any conditions that are hazardous, or violate a mandatory health or safety standard where the miner is expected to work or travel; and the general conditions of that miner's assigned working section. No later than 180 days after enactment, the Secretary must promulgate interim regulations relating to this section and a final rule not later than 2 years after enactment.

- *Atmospheric Monitoring Systems.* Requires NIOSH to issue recommendations to the Secretary regarding how to ensure that atmospheric monitoring systems are used in underground coal mines. The Secretary must then promulgate requiring each operator of an underground coal mine install atmospheric monitoring systems consistent with the recommendations.

- *New Refresher Training for Miners.* Requires all miners to receive no less than 9 hours of refresher training on miner rights and responsibilities once every 12 months. The Secretary may also issue an order requiring that an operator of a coal or other mine provide additional training. If the mine has been involved in accidents and injuries. If the operator fails to provide training, a withdrawal order may be implemented pulling people out of the mine until the training is done. The training must be done by a certified, registered, and qualified person.

Potential Conservative Concerns:

- ***Federal Overreach*.** This bill continues a federal takeover of how mines are managed and operated. The bill imposes overly burdensome measures of regulation and severe penalties for violation, but does little to address miner safety.

- ***Premature Response to the West Virginia Coal Mine Incident*.** A study on what exactly happened leading up the Upper Big Branch coal mine tragedy has not been released. In fact, three investigations are currently underway. Congress should wait for the facts before legislating a hugely prescriptive and overreaching bill.

- ***Punitive Punishments That Don't Improve Workplace Safety***. By lowering liability thresholds and imposing severe fines, the bill aims at punishing bad actors, to the detriment of many mine operators and business owners, much more than improving workplace safety.

- ***Duplicative Enforcement Measures***. MSHA already has the tools it needs to penalize bad actors. Before implementing new laws, we should figure out whether MSHA is using the tools at its disposal.

- ***Boon for Environmentalists and Minor Energy Sources***. While the bill would affect all types of mining, its biggest target is coal mining. Increasing the cost of coal mining will either increase the cost of coal or make coal mine operators less profitable (forcing them to close operations, fire workers, etc.). Such occurrences would weaken the coal industry and thus would relatively strengthen the market positions of minor energy sources (like wind) and deliver a win for environmentalists looking to take down the coal industry.

- ***Mine Safety and Health Administration (MSHA) Making Employment Decisions in Place of Mine Operators.*** MSHA will have the authority under this bill to fire miners or employees that they deem to have violated certain mandates laid out in the bill. This removes the operator of the mine from the decision who knows best who to hire and fire.

Additional Background: On April 5, 2010, at the Upper Big Branch Mine coal mine, an explosion occurred more than 1,000 feet underground. The mine is about 30 miles south

of Charleston, West Virginia and the explosion claimed the lives of 29 workers. This was the most deadly mining accident since a 1970 explosion killed 38 in Hyden, Kentucky. Since April 2009, the Upper Big Branch mine had been cited eight times for "substantial" violations of the mine's methane control plans. However, it should be noted that to date, no entity that has been charged with investigating this accident has reached a conclusion about what triggered the underground explosion.

In June 2006, Congress passed and President Bush signed into law S. 2803, the Mine Improvement and New Emergency Response Act (MINER Act). This legislation passed the Senate by unanimous consent, and passed the House on June 7, 2006 by a roll call vote of 381-37. This legislation was supported by the mining industry, as well as unions representing mine workers. Then Ranking Minority Member Miller opposed the legislation and claimed that it was not broad enough in protecting miners in various areas. In 2007, Chairman Miller introduced H.R. 2768, the Supplemental-Mine Improvement and New Emergency Response Act (S-MINER). At this point the MINER Act had not been given enough time to work. This legislation passed the House on January 16, 2008 by a roll call vote of 214-199, and was never considered in the Senate. Committee Republicans at the time asserted that this legislation did not increase the safety and health of miners, and argued that several provisions of the legislation would have resulted in a reduction of safety. This legislation also included at least a dozen federal mandates to the private sector and many businesses reported that they would not be able to absorb the increased costs and requirements without significantly scaling back—or shutting down—their operations. CBO estimated that the costs of the federal mandates would have cost the private sector at least $1.1 billion.

Groups Opposed:

- Chamber of Commerce (will key vote)
- Independent Electrical Contractors, Inc.
- Industrial Minerals Association
- National Association of Manufacturers (will key vote)
- National Mining Association
- Salt Institute

Committee Action: H.R. 6495 was introduced on December 3, 2010, and referred to the House Committee on Education and Labor. No further public action was taken. A similar bill, H.R. 5663, was marked up by the Committee on July 21, 2010. It never received floor time.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: While there is no CBO score available for H.R. 6495, a similar bill (H.R. 5663) was passed out of Committee in July 2010. The total authorization level for H.R. 5663 for FY2011-FY2015 for the MSHA portion of the bill (the OSHA portion is not included in H.R. 6495) is $54 million over five years. The estimated revenues from the CBO score of H.R. 5663 is $100 million over five years. However, that includes

OSHA and the bill has changed since then. We have been given indication by the Education and Labor Committee that the MSHA portion would raise revenue by approximately $120 million.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. Among other things, the bill creates new whistleblower protections and expands the authority of MSHA.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. While there is no CBO score available for H.R. 6495, a similar bill (H.R. 5663) was passed out of Committee in July 2010. "CBO has determined that H.R. 5663 contains several private-sector mandates and one intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of those mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates…"

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Although the bill contains no earmarks, and there is no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Natalie Farr, Natalie.farr@mail.house.gov, (202) 226-0718.